



INTERIOR BOARD OF INDIAN APPEALS

Estate of Everett Cozad

13 IBIA 185 (06/26/1985)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF EVERETT COZAD : Order Vacating Order on Rehearing
: and Remanding Case
:
: Docket Nos. IBIA 85-13
: IBIA 85-14
:
: June 26, 1985

On December 31, 1984, the Board of Indian Appeals (Board) received two notices of appeal in the above estate, Indian Probate Nos. IP TU 152 P 82 and IP OK 187 P 84. The appeals were filed by Johnnie Lee Cozad and Beverly Cozad (appellants), each appearing pro se. Appellants sought review of an October 16, 1984, order on rehearing issued by Administrative Law Judge Sam E. Taylor.

In the original order determining the heirs of decedent Everett Cozad, issued on January 21, 1983, Judge Taylor found that decedent's heirs were his five children, Johnny Lee Cozad, Eunice Carol Cozad Kodaseet, Adrian Bernard Cozad, Beverly Lavita Cozad, and Everett Gayle Cozad, Jr. On rehearing, Judge Taylor found that decedent was also survived by a common-law wife from whom he had not been divorced, Olynthia Pipestem Cozad. Accordingly, Judge Taylor found that Olynthia Cozad was entitled to an undivided 1/3 interest in decedent's Indian trust property. The shares of each of decedent's five children were thus reduced from 1/5 to 2/15.

In their appeals to this Board, appellants argue that they did not receive notice of the rehearing and therefore were not able to contest the assertions made by Olynthia Cozad. The transcript of the rehearing shows that Judge Taylor noted the absence of any of decedent's children. A review of the record shows that each appellant used a different return address for the notice of appeal to the Board than the one used by Judge Taylor to notify him or her of the petition for rehearing. Although a person is normally presumed to have received notice when it is sent to the last known address, appellants here each specifically deny receiving notice. There is no proof that they did receive notice. 1/

1/ In this regard, there is no merit in appellee Olynthia Cozad's contention that a letter she received from Eunice Carol Cozad Kodaseet shows that Ms. Kodaseet had notice of her petition. First, although Ms. Kodaseet may have a personal interest in the outcome of this case similar to that of her brother and sister, she is not an appellant in this matter. Furthermore, her letter shows knowledge only of Olynthia Cozad's petition for rehearing, not of any order granting rehearing.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 16, 1984, order on rehearing is vacated and the case is remanded to Judge Taylor for a full hearing on the status of Olynthia Cozad.

//original signed
Bernard V. Parrette
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge